whereby the company owes the public generally the duty to correctly transmit and deliver all messages,—hence, the sendee cannot bring an action for the breach of a duty which is not owed him. But the contract as embodied in the telegraph blank, is binding upon the sendee, and without this contract between the sender and the company the latter owed the sendee no duty, and hence there could be no negligence for which a recovery could be had in absence of the contract. *Gardner* v. *Western Union Telg. Co.*, 231 Fed. 405; *Findlay* v. *Western Union Telg. Co.* (C. C.), 64 Fed. 459.

The reasonableness and validity of the conditions limiting the telegraph company's liability is not a question to be passed upon by the state or federal courts, as this right is given to the Interstate Commerce Commission by Congress. *Williams* v. *Western Union Telg. Co.*, 203 Fed. 140; *Gardner* v. *Western Union Telg. Co., supra.* But even before telegraph companies had been declared common carriers, the United States Supreme Court had declared these conditions to be valid and binding. *Primrose* v. *Western Union Telg. Co.*, 154 U. S. 1.

The reason given by the court in allowing the plaintiff $50.00—the maximum recovery allowed by the contract for a repeated message—was that, as no error was made in the transmission of the message it would not have prevented the injury if it had been repeated, therefore it was considered as a repeated message.

LANDLORD AND TENANT—TERMINATION ON NOTICE—ILLEGAL USE OF PREMISES.—A storeroom was leased "for a saloon and for no other purposes," and a provision in the lease stipulated that if it became unlawful to conduct a saloon therein, the lessee might terminate the lease by giving proper notice. *Held,* provision enforcible. *Halloran* v. *Jacob Schmidt Brewing Co.* (Minn.), 162 N. W. 1082.

In the absence of an express stipulation in a lease of property, guarding against a possible future prohibition law, the courts are somewhat divided as to whether or not the lessee has an implied right to terminate the lease upon the passage of a prohibition law. Where property was leased for a first-class saloon and not to be used for any disreputable business, it was held that other legitimate businesses were not excluded, and the lessee was liable on his contract. *San Antonio Brewing Ass'n* v. *Brents*, 39 Tex. Civ. App. 443, 88 S. W. 368. And a lessee was held liable upon the lease of property for a saloon and restaurant, even though his right to conduct a saloon was taken away by an act of the legislature. *Standard Brewing Co.* v. *Weil* (Md.), 99 Atl. 661. This is because the lessee should have contemplated the possible passage of a prohibition law and should have stipulated as to his rights in case of the happening of such a contingency. *Houston, etc,,* v. *Keenan*, 99 Tex. 79, 88 S. W. 197; *Goodrum Tobacco Co.* v. *Potts-Thompson Liquor Co.*, 133 Ga. 776, 66 S. E. 1081. On the other hand the lessee has been held not liable for breach, even though the use of the property was not restricted to saloon purposes alone, because the purpose of the contract has become unlawful through no fault of the lessee. *Heart* v. *East End Brewing Co.*, 121 Tenn. 69, 113 S. W. 364.

In a case similar to the instant case where property was leased for occupation as a bar and not otherwise, the lessee was released from liability upon the passage of a prohibition law. *Greil Bros. Co.* v. *Mabson,* 179 Ala. 444, 60 South. 876. *A fortiori,* when the lessee reserves the right to terminate the lease in case he is unable to procure a liquor license, he is not liable for breach of covenant. *Fred Miller Brewing Co.* v. *Fleming* (Tex.), 143 S. W. 300; *Wertheimer* v. *Citizen's Bank Building,* 117 Ark. 50, 173 S. W. 841. Likewise when the property was leased for saloon purposes only, but the lessor after executing the lease gave his permission to use the premises for a bootblack and cigar stand, a prohibitory liquor law was held to terminate the lease. *The Stratford, Inc.* v. *Seattle Brewing, etc, Co.* (Wash.), 162 Pac. 31, L. R. A. 1917C, 931.

TELEGRAPHS AND TELEPHONES—INJURY FROM TELEPHONE—MEASURE OF CARE.—The plaintiff, for whose use a telephone had been installed in a store, was injured while using the telephone by lightning conducted over the telephone wires. *Held,* that the telephone company is liable for its failure to exercise the highest degree of care practicable under the circumstances. *Warren* v. *Missouri & Kansas Telephone Co.* (Mo.), 196 S. W. 1030.

The general rule, by which the liability of those employing electricity is determined, is that the care of prudent business men under the circumstances must be exercised, or they will be liable. *Griffith* v. *New England Tel. Co.,* 72 Vt. 441, 48 Atl. 643, 52 L. R. A. 919; *Southern Bell Tel. Co.* v. *McTyer,* 137 Ala. 601, 34 South. 1020, 97 Am. St. Rep. 62. Other authorities require the exercise of the highest degree of practicable care. *Davenport* v. *King Electric Co.,* 242 Mo. 111, 145 S. W. 454; *Will* v. *Edison, etc., Co.,* 200 Pa. St. 540, 50 Atl. 161. And although telephone companies employ a low voltage, not dangerous in itself, it is as much the duty of the company to prevent a dangerous current from a high voltage wire from coming in contact with its own wires, as to send only a harmless current. *Delahunt* v. *United Tel. Co.,* 215 Pa. 241, 64 Atl. 515.

Likewise, the danger from lightning being conducted along the wires is very great, and the general rule is that the proper degree of care has only been exercised, when the company has placed and maintained such known and approved appliances as were reasonably necessary. *Griffith* v. *New England Tel. Co., supra; Southern Bell Tel. Co.* v. *McTyer, supra.* So where the company failed to put in a ground wire, or used a defective appliance, it was liable. *Southwestern Tel. Co.* v. *Abeles,* 94 Ark. 254, 126 S. W. 724; *Southwestern Tel. Co.* v. *Evans,* 54 Tex. Civ. App. 63, 116 S. W. 418; *Griffith* v. *New England Tel. Co., supra.* But since lightning is not within the control of the telephone company, and cannot absolutely be guarded against, the company is not an insurer, but is only liable for its failure to use proper appliances to minimize the danger. *Brucker* v. *Gainesboro Tel. Co.,* 125 Ky. 92, 100 S. W. 240; *Southern Bell Tel. Co.* v. *McTyer, supra.*

Since the telephone company is the servant of the public generally, the use and maintenance of wires is justified, even though danger from